

ZURICH AMERICAN INSURANCE, et al.,	:	
	:	
Appellants,	:	
	:	Civ. Action No. 3:04cv4 (GCM)
v.	:	
J.A. JONES, CORP., et al.,	:	
	:	
Appellees.	:	
In re:	:	
	:	Case No. 03-33532
J.A. JONES, INC., et al.,	:	Chapter 11
	:	
Debtors.	:	Jointly Administered

Upon consideration of the *Motion to Reopen Case for Entry of an Order Resolving Appellant’s Amended Motion to Vacate and Remand [Docket No. 16]* (the “Motion”), filed on behalf of Zurich American Insurance Company (“Zurich”), the Court makes the following findings of fact:

1. On November 12, 2003, Zurich filed its Motion (A) for Allowance and Payment of Administrative Expense Claim and (B) to Compel Debtor to Assume or Reject an Executory Contract, or Alternatively, for Relief from the Automatic Stay [Bankr. Docket No. 593] (the “Bankruptcy Court Motion”) in the U.S. Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”). On December 23, 2003, the Bankruptcy Court entered an order denying the Bankruptcy Court Motion [Bankr. Docket No. 1075] (the “Bankruptcy Court Order”).

2. Zurich appealed the Bankruptcy Court Order to this Court on January 7, 2004. On February 13, 2004, this Court entered an order [Docket No. 11] (the “District Court Order”) affirming the Bankruptcy Court Order. Zurich appealed the District Court Order to the U.S. Court of Appeals for the Fourth Circuit (the “Circuit Court”) on March 10, 2004.

3. On August 19, 2004, the Bankruptcy Court entered an order confirming the Third Amended and Restated Joint Chapter 11 Plan of Liquidation for J.A. Jones, Inc. and Certain Debtor Subsidiaries (the “Plan”).

4. On October 20, 2004, the Circuit Court entered an order dismissing Zurich’s appeal and remanding the case to this Court. On November 16, 2004, subsequent to the Circuit Court’s dismissal, Zurich filed the Amended Motion to Vacate pursuant to the settlement between Zurich and J.A. Jones, Inc. and its debtor subsidiaries (the “Debtors”) in connection with the Plan (the “Settlement”).

5. On August 3, 2005, this Court entered an order that had been tendered by counsel for Zurich granting the motion to vacate [Docket No. 17], which order was withdrawn by the Court on August 12, 2005 at Zurich’s request [Docket No. 18]. On August 22, 2005, the Court again entered the proposed order that had been tendered by Zurich [Docket No. 19], and it was withdrawn at Zurich’s request on September 5, 2005 [Docket No. 20]. Accordingly, this case was closed without resolution of the Amended Motion to Vacate.

6. On September 25, 2005, Carroll Services, LLC, as Liquidation Trustee of the bankruptcy estates of the Debtors (the “Liquidation Trustee”) brought an adversary proceeding against Zurich seeking to avoid and recover certain transfers to Zurich (the “Adversary Proceeding”). Zurich and the Liquidation Trustee settled the Adversary Proceeding and a stipulation and agreed order to that effect was entered by the Bankruptcy Court on November 9,

2006. Prior to settlement of the Adversary Proceeding, the Liquidation Trustee had expressed concern that Zurich may attempt to use this Court's vacating the District Court Order as a basis for a defense or claim in the Adversary Proceeding or any other matter or proceeding related to the bankruptcy cases of the Debtors. Because the Adversary Proceeding has been settled and closed by the Bankruptcy Court, this concern should be moot.

7. It appears that this case should be reopened in order to resolve the Amended Motion to Vacate. Based on the Settlement, it appears that the relief requested in the Amended Motion to Vacate is appropriate. Further, it appears that such relief would be in the best interest of the Debtors, the Debtors' estates and the Debtors' creditors.

THEREFORE, based upon the above findings of fact, it is hereby ORDERED, ADJUDGED, and DECREED that:

- 1) The Motion is GRANTED and this case is reopened;
- 2) The Amended Motion to Vacate is GRANTED; and
- 3) The District Court Order is vacated, and this matter is remanded to the Bankruptcy Court.

Signed: April 23, 2007

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

